

LAW OFFICES

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REPORT ON RECENT ETS
AND IAQ DEVELOPMENTS

January 7, 1993

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REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

SPECIAL REPORT: EPA RISK ASSESSMENT ON ETS

[1] EPA Announces Release of Risk Assessment

EPA announced the release of the Risk Assessment on ETS Thursday morning during a press briefing conducted by EPA Administrator William Reilly and Secretary of Health and Human Services Louis Sullivan.

Copies of the first sections of the risk assessment were included in EPA's press kit, and the agency promised that the rest of the report would be distributed later. The first sections indicate that the document's conclusions parallel those of the June 1992 draft risk assessment with respect to lung cancer in adults and non-cancer respiratory diseases and disorders in children.

ETS "has now been shown conclusively to increase the risk of lung cancer in healthy nonsmokers," Reilly claimed. "While EPA has no regulatory authority over ETS, we will be working with the Occupational Safety and Health Administration, which can regulate smoking in the workplace. I hope that this report will form the scientific basis for a policy on their part." Reilly estimated that about 20 percent of all lung cancers "caused by factors other than smoking" are attributable to ETS exposure.

Sullivan called the risk assessment "a watershed" and said, "EPA's work stands proudly as one of the most studied health reports ever. Its conclusions were maintained and even strengthened during the many arduous months of review and debate." The HHS Centers for Disease Control is launching a "multimedia public information program" relating to the alleged health effects of ETS, he announced.

With respect to sudden infant death syndrome (SIDS), Sullivan claimed that "alarming new information" too recent to be included in the risk assessment indicates that maternal smoking significantly increases the risk of SIDS. He referred specifically to a recent study by the National Center for Health Statistics, which was excerpted in issue 37 of this Report, Decem-

ber 18, 1992. The final risk assessment states that available data do not allow a conclusion to be reached about an association between ETS exposure and SIDS.

The following materials are attached to this Report:

Appendix B Administrator Reilly's Statement

Appendix C Secretary Sullivan's Statement

Appendix D Risk Assessment through Chapter 2

Appendix E Philip Morris Position Statement and Discussion Points

Appendix F TI Press Materials

Philip Morris U.S.A. held a press briefing on January 6, 1993, at the National Press Club in Washington, D.C. Written press materials were distributed by Philip Morris U.S.A. and The Tobacco Institute. In addition, reporters for both the print and broadcast media interviewed various persons speaking on behalf of the industry. Echoing the scientific criticism of the drafts of the risk assessment, industry spokespersons said there is no statistically-significant increased risk of lung cancer from exposure to ETS and charged EPA with putting policy objectives ahead of science.

Anti-smoking activists interviewed by the media hailed the risk assessment and said they hoped it would lead to broad prohibitions on indoor smoking, particularly in workplaces, schools and day-care centers. The Coalition on Smoking OR Health recommended three action steps that "Congress and President-elect Clinton should take immediately": (i) legislation to increase the tobacco excise tax; (ii) legislation that would require tobacco products to be regulated by the Food and Drug Administration; and (iii) comprehensive indoor air legislation, including a ban on smoking in the workplace. See Coalition press release, January 6, 1993.

Although OSHA's reaction to the risk assessment was not reported immediately, OSHA officials have repeatedly said they will consider the risk assessment in

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deciding whether — and if so, how — to regulate indoor air quality in the workplace.

In Congress, plans to introduce a more stringent version of the 1992 PRO-KIDS legislation were announced by Illinois Representative Richard Durbin (D) and New Jersey Senator Frank Lautenberg (D); they cited the risk assessment in support of the legislation. A discussion of the anticipated new bill appears in the next item of this Report.

RISK ASSESSMENT FINDINGS

Consistent with the June 1992 draft risk assessment, the final document designates ETS as a Group A (known human) carcinogen and claims that ETS exposure is responsible for approximately 3,000 lung cancer deaths each year in the United States.

The document further reiterates the revised draft risk assessment's assertions that parental smoking is causally associated with the following: (i) increased prevalence of respiratory symptoms of irritation (cough, sputum and wheeze); (ii) increased risk of lower respiratory infections, including pneumonia, bronchitis and bronchiolitis; (iii) increased prevalence of middle ear effusion; (iv) a "small but statistically significant" reduction in lung function as tested by objective measures of lung capacity; and (v) additional episodes and increased severity of asthma in children who already have the disease.

The EPA estimates that parental smoking contributes between 150,000 to 300,000 lower respiratory tract infections annually among infants and children under 18 months of age, resulting in 7,500 to 15,000 hospitalizations. The risk assessment also contends that ETS exposure worsens symptoms in approximately 400,000 and one million asthmatic children per year and probably results in 8,000 to 26,000 new cases of asthma annually.

The document finds the evidence "inconclusive" regarding an association of parental smoking with either upper respiratory tract infections (colds and sore throats) or acute middle ear infections in children.

The risk assessment concludes that "while there is strong evidence that infants whose mothers smoke are at an increased risk of dying from SIDS [sudden infant

death syndrome], available studies do not allow us to differentiate whether and to what extent this increase is related to in utero versus postnatal exposure to tobacco smoke products."

Regarding non-cancer respiratory diseases and disorders in adults, the final risk assessment contends that ETS exposure has "subtle but significant effects on the respiratory health of nonsmoking adults, including coughing, phlegm production, chest discomfort, and reduced lung function."

USE OF RISK ASSESSMENT BY THE U.S. OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

As of this writing, OSHA's reaction to the conclusions in the final risk assessment had not been reported. Before the risk assessment was released, *The Wall Street Journal* quoted an OSHA spokesman as saying, "We'll have to wait to see what the report says." He reportedly added that the fate of an OSHA indoor air quality rule will be determined by the incoming Clinton administration.

REILLY'S PRE-BRIEFING COMMENTS ABOUT THE LEGAL IMPLICATIONS OF THE RISK ASSESSMENT

On Wednesday, January 6, 1993, the day before the risk assessment was released, *The Wall Street Journal* reported on an interview with Administrator Reilly that purportedly occurred a month earlier.

In the interview, Reilly reportedly said that the risk assessment could substantially increase the legal liability of businesses. He was quoted as saying, "If you were running a bar or an airline or a body shop or whatever and you saw your people smoking or you allowed customers to smoke, you'd be opening yourself up 10 years, 15 years later to lawsuits. And people would be able to say you knew you were exposing us to cancer. There wasn't any doubt about the issue. The government has spoken on the question."

Reilly reportedly predicted that issuing the risk assessment will represent "one of the biggest decisions I ever will make." See *The Wall Street Journal*, January 6, 1993.

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WORKPLACE SMOKING POLICY GUIDE NOT RELEASED

EPA did not release a revised Workplace Smoking Policy Guide, the original draft of which was issued in June 1990 as a companion to the original draft risk assessment. According to *The Wall Street Journal*, Reilly said the policy guide could be issued by his designated successor, Carol Browner. Browner was among the first agency chiefs selected by President-elect Bill Clinton, who will be inaugurated on January 20, 1993. The *Journal* quoted Reilly as saying that he decided not to issue the policy guide with the risk assessment because it would "look like we're trying to torque the science, and I think the science will be compelling enough." See *The Wall Street Journal*, January 6, 1993.

HISTORY OF EPA RISK ASSESSMENT ON ETS

On June 25, 1990, EPA formally released the draft document *Health Effects of Passive Smoking: Assessment of Lung Cancer in Adults and Respiratory Disorders in Children* ("original draft risk assessment"). This document suggested that ETS should be classified as a Group A ("known human") carcinogen, purportedly in accordance with EPA's Guidelines for Carcinogen Risk Assessment. The original draft risk assessment's conclusion was based on 23 epidemiologic studies of nonsmoking women married to smokers (spousal smoking studies). Using the statistical technique of meta-analysis, the original draft risk assessment calculated a statistically significant summary relative risk of 1.41 (95% CI 1.26-1.57).

Moreover, using the data from nonsmoking women, the document calculated that 3,800 lung cancer deaths could be attributed to ETS in the United States each year. With regard to children, the EPA did not conduct a risk assessment, but rather reviewed some of the literature in this area and concluded that ETS exposure was related to certain childhood respiratory ailments.

When the original draft risk assessment was released, EPA announced a public comment period which closed on October 1, 1990. More than 100 comments were submitted on the original draft risk assessment. (An additional 100 comments were submitted on its companion publication, the draft Workplace Smoking

Policy Guide.) The public comments were reviewed and summarized by the EPA consultant responsible for the original draft risk assessment. In a document distributed in December 1990, he characterized the majority of the public comments as "quite lengthy, detailed, and highly critical."

In the fall of 1990, the original draft risk assessment was submitted for review to an EPA SAB indoor air quality committee chaired by Dr. Morton Lippmann. Substantial press coverage was devoted to the inclusion of Dr. David Burns, an anti-smoking activist, on the reviewing committee. EPA issued its "charge" to the committee on November 1, 1990. The committee met on December 4-5, 1990, in Arlington, Virginia, for a public hearing to receive public comments and to discuss its recommendations concerning the original draft risk assessment.

A number of substantial criticisms and suggestions for revisions to the document were made at that meeting. Nevertheless, at the end of the meeting, Chairman Lippmann announced at a press conference that the committee had reached a "consensus" that ETS should be classified as a Group A carcinogen. He added, however, that he felt the alleged cancer risk posed by ETS was less than the risk posed by rush hour traffic in Washington, D.C. As the press conference began, an EPA press liaison stated that Dr. Lippmann was speaking for himself, not the EPA, the SAB, or other SAB members.

During late 1990 and early 1991, the indoor air quality committee drafted a written report concerning its review of the original draft risk assessment. The report supported the "Group A" designation, but recommended that EPA revise the original draft risk assessment. The committee submitted its report to the SAB Executive Committee at a meeting held on April 18-19, 1991. The Executive Committee approved the committee's report, and it was delivered to EPA Administrator William Reilly on April 23, 1991.

Fourteen months later, on June 18, 1992, EPA released a revised draft risk assessment, and the same SAB indoor air quality committee simultaneously scheduled an open meeting to review the document less than five weeks later, on July 21-22, 1992. In the revised draft, the EPA renamed the document *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*.

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At the public hearing, the review committee approved most of the document as written. Those portions not approved as written included Chapter 3 on ETS exposure assessment and Appendices A-E, to which the review committee recommended extensive revisions. The review committee prepared a written report, which was presented to the SAB Executive Committee at its meeting on October 27, 1992.

The Executive Committee approved the indoor air quality committee's report with little discussion, although Jim J. Tozzi was permitted to make an oral presentation during the meeting, which in turn precipitated discussion on a number of issues. Dr. Tozzi, the Director of Multinational Business Services, Inc., attended the meeting at the request of two cigarette manufacturers; he recommended five actions the Executive Committee should take before finalizing the risk assessment. The Executive Committee did not accept his recommendation.

On November 20, the SAB submitted its final report on the revised draft risk assessment to Administrator Reilly. Earlier that month, although President Bush was defeated in his bid for re-election, EPA Administrator Reilly made it a priority to complete and release the risk assessment before the Bush administration left office on January 20, 1993.

On December 4, Dr. Tozzi submitted supplemental written comments to EPA regarding the significance of two lung cancer studies published after the release of the revised draft risk assessment (Stockwell, *et al.*, and Brownson, *et al.*). Tozzi said that if those two studies are included in a meta-analysis using EPA's data and methods, "[t]he data indicate that there is a substantial likelihood of no increase in lung cancer risk from spousal exposure to ETS."

In a response dated December 17, Erich Bretthauer of the EPA disagreed with Tozzi stating, "we find the results of the two studies to be very consistent with the body of evidence developed in our document to support an EPA Group A classification of ETS as a human lung carcinogen."

Some of the information for this discussion came from *The Wall Street Journal*, January 6 and 7, 1993; *The Washington Post*, January 6, 1993; *USA Today*, January 6, 1993.

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IN THE UNITED STATES
REGULATORY AND LEGISLATIVE
MATTERS
CONGRESS

[2] **PRO-KIDS Legislation to be Reintroduced
Following Release of Risk Assessment on ETS**

Citing the "long-awaited" EPA Risk Assessment on ETS, Senator Frank Lautenberg (D-N.J.) and Representative Richard Durbin (D-Ill.) announced their intention to reintroduce legislation to "protect millions of American children from environmental tobacco smoke," according to a January 6, 1993, press release issued by Durbin.

The bill, entitled, "Preventing Our Kids from Inhaling Deadly Smoke (PRO-KIDS) Act of 1993" goes further than similar legislation introduced in 1992 and would prohibit smoking in all federally-funded indoor facilities that serve children under age 18. Excepted are areas in a facility where children are not served if separately ventilated from the areas where children are served. Facilities affected under the legislation include Head Start, WIC, health and day care centers and all federal office buildings. The bill provides for a \$1,000 fine to be assessed against an agency or program for each violation.

The bill would allow a program or agency to request a waiver if extenuating circumstances prevent compliance after a good-faith effort has been made.

The bill will also apparently require EPA to establish an "Environmental Tobacco Smoke Advisory Office" to provide information about the alleged dangers of ETS to the public.

PRO-KIDS legislation originally was introduced in both the House and Senate in August 1992. (S. 3169 and H.R. 5815) Also sponsored by Lautenberg and Durbin, action on the bill was never taken, although an unsuccessful attempt was made by Lautenberg to attach it as an amendment to the Labor-HHS Appropriations bill. The amendment was dropped by a House-Senate conference committee.

When the bill was first introduced, Lautenberg and Durbin cited the EPA revised draft Risk Assessment in

their comments before Congress, both stated that ETS is a known human carcinogen and used statistics from the EPA draft report relating to the health effects on children. The 1992 bill would have only applied to federally-funded programs which serve children less than five years and would not apply to federal office buildings.

U.S. ENVIRONMENTAL PROTECTION AGENCY
(EPA)

[3] **"The Environmental Protection Agency,"
WNET-TV, Technopolitics, New York, December 12, 1992, 10:30 a.m.**

A television program recently broadcast in cities nationwide addressed the question whether the EPA lowered its scientific standards when conducting its risk assessment on ETS in an attempt to outlaw smoking in public places.

Appearing as guests on the program were James Tozzi, Director of Multinational Business Services, Inc., and John Banzhaf, Executive Director of ASH.

Described as a tobacco industry consultant, Tozzi criticized the EPA for lowering confidence levels from 95 percent to 90 percent in its risk assessment on ETS and said that the EPA should explain why it did so before the risk assessment is used to set policy. Banzhaf brushed aside such criticisms, saying that scientists "frequently use 90 percent for technical reasons, particularly when you're dealing with what is called meta-analysis in several different studies together."

According to John Hanahan of the Heritage Foundation, a conservative think tank, the 5 percent difference in confidence levels is significant and was lowered in the EPA's risk assessment to guarantee a finding that ETS causes cancer. Hanahan addressed the issue during the introduction to the program.

[4] ***Targeting Indoor Air Pollution: EPA's Approach and Progress*, United States Environmental Protection Agency, EPA 400-R-92-012, September 1992**

In this recent publication, EPA describes its program for "dealing with indoor air pollution." The agency states that "prudent public policy dictates that reasonable efforts be undertaken to reduce people's exposure

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to potentially harmful levels of indoor air pollutants." The agency advocates pollution prevention, efficient resolution of problems, and effective research and development.

In the publication, EPA also lists primary objectives of its indoor air pollution program. These objectives include establishing effective partnerships with "target audiences," developing alliances with other federal agencies, developing guidance on IAQ issues, designing market-based incentives for lower chemical emissions from products, identifying and filling research gaps, enhancing scientific understanding and public awareness concerning IAQ, and finally, bringing about "substantial reductions" in human exposure.

EPA discusses the "building system" approach to IAQ questions. The document states that EPA has concluded that "people's exposure to indoor air pollutants can be reduced significantly by implementing current knowledge about sound building operation and maintenance practices." Moreover, the document states that "[t]his emphasis on a 'buildings approach' holds the most promise for addressing all of the factors...that affect indoor air quality."

Nevertheless, the document further states that "the Agency also strongly believes that it must aggressively utilize its combined statutory authorities to identify specific pollutants that present direct health risks in the indoor environment, and to use a variety of means to reduce their levels indoors." The substances cited following this statement are radon, ETS, asbestos, toxic substances, pesticides, lead, and indoor air pollutants from drinking water.

U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

- [5] *AFL-CIO v. OSHA* (U.S. Court of Appeals, Eleventh Circuit)(decided July 7, 1992; rehearing denied October 22, 1992)

On December 10, 1992, Secretary of Labor Lynn Martin reportedly sought permission in writing from the U.S. Solicitor General to file an appeal to the U.S. Supreme Court from the Eleventh Circuit decision which vacated OSHA's air contaminants standard for some 428 substances. See issues 26, 34 and 35 of this Report, July 17, November 6 and 20, 1992.

Apparently, there is no formal deadline within which the solicitor general must issue his decision. A petition for certiorari with the Supreme Court, however, must be filed by January 21, 1993, unless that Court grants a request for an extension of time. See *Occupational Safety and Health Reporter*, December 16, 1992.

STATE AND LOCAL GOVERNMENTS

[6] Privacy Legislation

The term "privacy legislation" refers to state statutes which protect workers who smoke off the job or, more generally, use legal products or engage in legal activities outside the workplace.

•Michigan

On December 16, 1992, Governor John M. Engler (R) vetoed a measure that would have prohibited discrimination in the employment of individuals who smoke or use tobacco products outside the work environment. See S. 484, Reg. Sess. (1992). Michigan joins California, Delaware, Florida, Hawaii and Washington as states in which privacy legislation has been vetoed in the most recent legislative session; such legislation failed to pass in 12 other states. Twenty-eight states currently have privacy laws; a 29th state provides protection to workers by executive order. In the District of Columbia, a bill that would prohibit discrimination based on tobacco use off the job reportedly has passed the Council and awaits review by Mayor Sharon Pratt Dixon and Congress.

[7] State and Local Legislative Activities Related to ETS

•Local Governments in California

The Los Angeles City Council will reportedly consider, for the third time in recent years, a ban on smoking in restaurants. The proposal was reintroduced in mid-December for consideration in 1993 by Councilman Marvin Braude, a former smoker, who has apparently been waging a 17-year campaign to wipe out smoking across the city. See *Los Angeles Times*, December 16, 1992.

•Local Governments in Massachusetts

The Boston City Council has reportedly voted to end a ban on smoking in City Hall. According to press reports, smoking will be permitted in two cafeterias and other designated smoking areas if the measure is

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approved by Mayor Raymond L. Flynn. According to Flynn's press secretary, the administration believes that allowing any smoking in City Hall poses a danger to nonsmokers. See *The Boston Globe*, December 17, 1992.

ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

- [8] *Blanchard, et al. v. R.J. Reynolds Tobacco Company, et al.* (District Court, Galveston County, Texas) (filed July 31, 1992)

On January 4, 1993, the defendants named and served in the original petition filed a motion to transfer venue and motion to strike claiming (i) venue in Galveston County is improper, (ii) plaintiffs did not have leave of court to join additional parties, (iii) the new parties were improperly joined, and (iv) plaintiffs' first supplemental petition is an improper attempt to forum-shop. In plaintiffs' supplemental petition, three plaintiffs and several new defendants were added. See issue 37 of this report, December 18, 1992.

- [9] *Broin, et al. v. Philip Morris, et al.* (Circuit Court, Dade County, Florida) (filed October 31, 1991)

Plaintiffs were granted another extension of time within which to file their brief appealing dismissal of the class action allegations. It is now due on January 11, 1993. The court has indicated it will grant no further extensions and that the appeal will be dismissed if no brief is filed on that date.

The Third District Court of Appeal also granted plaintiffs an extension of time within which to respond to defendants' petition for certiorari relating to plaintiffs' attempts to depose top company executives. The response is now due on January 20.

In the trial court, plaintiffs did not amend their complaint with respect to the fraud and conspiracy counts against CTR and TMA by December 10, 1992, the deadline set by the court.

With respect to defendants' written discovery requests, responses have been submitted for 22 of the 30

plaintiffs. As of this writing, plaintiffs had made no effort to extend the December 21 response deadline established by the trial court.

- [10] *Butler v. R.J. Reynolds Tobacco Co., et al.* (U.S. District Court, Southern District, Mississippi) (filed October 21, 1992)

The discovery and video trial testimony depositions of Plaintiff, Burl Butler, were concluded on December 19, 1992. Defendants' responses to plaintiffs' request for production of documents, request for admissions and interrogatories were served on January 6, 1993.

- [11] *Jason v. Philip Morris, et al.* (Superior Court, San Francisco County, California) (filed June 24, 1992)

On December 28, 1992, the trial court entered the written order granting the motion for summary judgment filed by R.J. Reynolds and joined by all defendants.

In the written order, the court gave the following reasons for dismissing the action: (i) Plaintiff cannot maintain an action solely for emotional distress damages because he does not satisfy the requirements for recovering such damages; (ii) as a matter of law, plaintiff's emotional distress was not "serious;" and (iii) Civil Code Section 1714.45 bars product liability lawsuits such as this action based on a claim of personal injury alleged to have been caused by tobacco products.

- [12] *Zwillman v. Brooke Group Ltd., et al.* (U.S. District Court, New Jersey) (filed February 15, 1991; Amended Complaint adding ETS claims filed February 13, 1992)

On December 7, 1992, the court asked for further briefing from the parties on whether plaintiff's wrongful death claim against Brooke Group and American is time-barred. Plaintiff submitted a supplemental memorandum on the issue that day. On December 11, American and Brooke Group submitted a letter to the court on the issue.

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ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

ASSAULT

- [13] *Leichtman v. WLW Jacor Communications, Inc.*
(Court of Appeals, First Appellate District,
Ohio) (complaint dismissed November 24,
1992; appeal filed December 9, 1992)

An order and entry of judgment granting defendants' motions to dismiss the complaint was entered on November 24, 1992. Plaintiff filed his notice of appeal on December 9. A prehearing conference is currently scheduled for January 13, 1993, at which time a briefing schedule will presumably be set.

The case involves a claim by antismoking activist Ahron Leichtman that a Cincinnati radio talk show host blew cigar smoke into his face during an interview on the day of the 1991 Great American Smokeout. Leichtman seeks unspecified actual and punitive damages as well as an order forcing the station to comply with Cincinnati health regulations.

In dismissing Leichtman's complaint with prejudice, the trial court ruled that Leichtman had failed to state a cause of action for assault and battery and for invasion of his privacy rights under Ohio law. The court found that Leichtman failed to allege that the defendants' conduct placed him in fear of immediate physical violence, and that he had consented to the alleged misconduct by voluntarily standing his ground and failing to leave when cigar smoke was allegedly blown in his face. The court also determined that an alleged violation of Cincinnati's smoking regulation could not be remedied by a private action for injunctive relief. The court did not address the defendants' First Amendment and pre-emption claims.

►Leichtman quoted in article on smoking bans, Item 33.

WORKPLACE: WORKER'S COMPENSATION

- [14] *Young & Rubicam, Inc.*, 1992 WL 371248 (New York Workers' Compensation Board) (decided November 25, 1992)

The board has affirmed the decision of a law judge who awarded compensation benefits to a claimant for exacerbation of a pre-existing asthma condition due to workplace ETS exposure.

The claimant, an accounts payable supervisor, alleged that she was forced to leave work because she was bothered by the pipe smoke generated by an executive vice president who refused to close the door to his office after she requested him to do so. The employer urged the board to find that the claimant had voluntarily left the workplace, taking advantage of an early retirement incentive, and that it would have provided the claimant with a smoke-free working environment.

- [15] *Bennett v. Virginia Department of Taxation*
(Workers' Compensation Commission, Virginia)

A data-input clerk for the Virginia Department of Taxation has reportedly filed a workers' compensation claim against her employer alleging that workplace ETS exposure caused her to be hospitalized with chronic asthmatic bronchitis. According to unnamed officials, this is the first workers' compensation suit of its kind in the state. A hearing which was originally scheduled for December 7, has been continued until some time in January, pending air quality studies of the claimant's workplace.

According to a press report, claimant Suzanne Bennett is seeking \$5,000 for medical bills and the return of vacation days and compensatory time. Bennett, a former smoker, claims that she could not work on Fridays because coworkers' cigarette smoke had accumulated in the area in which she worked to too great a degree. The employer in the case claims that it tried to accommodate Bennett's pre-existing condition. See *Associated Press*, December 29, 1992.

WORKPLACE: COLLECTIVE BARGAINING

- [16] *U.S. Dept. of the Navy Naval Station Mayport, Fla. and American Federation of Government Employees Local 2010*, 1992 WL 379053
(Federal Labor Relations Authority) (decided September 25, 1992)

The Federal Labor Relations Authority has adopted the order of a law judge who ruled that the employer was required to bargain over its decision to install glass windows in the doors of the rooms it had set aside for smoking at the U.S. Naval Station in Mayport, Florida.

The employer argued that the decision to install the windows was a "reserved right of management" to protect the safety of employees. The law judge agreed with the employer on this issue, finding there were

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genuine safety concerns with respect to nonsmoking employees who might need to communicate with those who were smoking in the designated smoking rooms.

The law judge agreed with the union that the impact of the window installation was not de minimis in that it exposed smoking employees to a "fish bowl" atmosphere. The law judge ordered the windows to be covered or removed pending good faith bargaining over the matter.

PRISONER CASES

- [17] *Helling v. McKinney* (U.S. Supreme Court)
(review granted June 29, 1992)

Argument before the U.S. Supreme Court is still currently scheduled for 10:00 a.m. January 13, 1993. The primary issue on appeal is whether a prisoner can state an Eighth Amendment claim for exposure to ETS that he alleges poses an unreasonable risk to his health.

Recently, a number of articles profiling the case have appeared in the media.

- [18] *Texas Inmates Lose Challenge to Smoking Ban*

A U.S. District Court judge reportedly dismissed two lawsuits in mid-December in which inmates, acting pro se, challenged a prison smoking ban on the ground that being forced to suffer nicotine withdrawal is cruel and unusual punishment.

Asserting in his order that "smoking is a health hazard," Judge Lynn Hughes compared nicotine withdrawal to other disruptions suffered by prisoners such as "loss of eating, exercise, sex, drinking and sleeping patterns." See *The Houston Chronicle*, December 22, 1992.

LEGAL ISSUES AND DEVELOPMENTS

- [19] "Employees' Rights: New Law Protects 'Legal Activities' of Workers," B. Franklin, *New York Law Journal*, December 17, 1992

This article discusses the New York law which, as of January 1, 1993, prohibits employers from refusing to hire individuals because they smoke, drink or engage in other "legal activities" outside the workplace. Governor

Mario Cuomo (D) signed the measure into law last August. See issue 29 of this Report, August 28, 1992.

The measure was supported by a coalition of tobacco companies, labor unions and civil liberties groups. It was opposed by business organizations and antismoking groups. Some companies reportedly remain opposed to the legislation and will offer jobs to smokers and nonsmokers alike by emphasizing their "smoke-free environment."

According to New York attorneys consulted about the new law, most employees are not aware of it and may not learn about it until the first lawsuits are filed. Under the so-called "legal activities" legislation, the State Attorney General can enforce the law by seeking injunctive relief or civil penalties. Individuals may bring private actions for equitable relief and damages for violations of their rights under the law.

SCIENTIFIC/TECHNICAL ITEMS

ETS EXPOSURE AND MONITORING

- [20] "Assessment of Multiple Markers of Environmental Tobacco Smoke (ETS) in Controlled, Steady-State Atmospheres in a Dynamic Test Chamber," R.J. Rando, P.K. Menon, H.G. Poovey, and S.B. Lehrer, *American Industrial Hygiene Association Journal* 53(11): 699-704, 1992 [See Appendix A]

Based on test chamber measurements, the authors of this study report that multiple markers are useful both in assessing ETS levels and for distinguishing the contributions of sidestream and mainstream smoke to ETS. They also suggest that multiple markers may offer the potential to estimate smoke age.

INDOOR AIR QUALITY

- [21] "Modeling the Modification of the Risk of Radon-Induced Lung Cancer by Environmental Tobacco Smoke," D.J. Crawford-Brown, *Risk Analysis* 12(4): 483-493, 1992 [See Appendix A]

The author of this paper presents model predictions and estimates lung cancer risks purportedly due to radon exposure and ETS exposure. The author con-

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cludes that his research "precludes any simple statements concerning the role of ETS in governing the incidence of lung cancer in a population." The research involved in this paper was supported by a U.S. EPA subcontract to Kenneth G. Brown, Inc.

[22] "Proactive, Holistic Approach Leads to Employee Satisfaction," *Indoor Air Quality Update*, December 1992

This case study describes the development of an "environmentally sound" office space by Environmental Design International (EDI), a Marietta, Georgia, consulting firm. Reportedly, EDI used a "holistic" approach to indoor environmental quality (IEQ) in this project.

In developing the office space, construction materials and furnishings were specially chosen to be "environmentally friendlier." Latex-based paints, water-based glues, low-formaldehyde furniture fabrics, and continuous-filament carpeting were utilized. Reportedly, VOC measurements in the office space were 50-75 percent lower than in another office space where such construction materials were not utilized.

The article acknowledges that "IEQ problems attributed to poor HVAC design are numerous and well documented." In the case building, however, the ventilation system was reportedly incapable of delivering outside air at 20 cfm per occupant, as required under ASHRAE Standard 62-1989. Therefore, rather than use the Standard's Ventilation Procedure, the authors used the Air Quality Procedure to improve the quality of indoor air, using a special filtration system.

The project also included special attention to an initial IAQ assessment, evaluations of maintenance and janitorial procedures, evaluation of operating procedures, environmental commissioning of the building's systems, and routine, proactive IEQ monitoring.

Reportedly, data from the project are under evaluation. Anecdotal reports have apparently suggested that employees perceive improved indoor air quality and that productivity has increased. Moreover, it also appears that absenteeism has decreased.

[23] "Carpet and Indoor Air," *Indoor Air Bulletin*, Volume 2, Number 6, 1992

Indoor Air Bulletin reports that ongoing attention is being paid to carpet and its purported effects on indoor air quality. In particular, the newsletter discusses recent reports by Anderson Laboratories that a bioassay using carpets resulted in the deaths of several test animals.

Reportedly, Anderson Laboratories tested nine carpet samples taken from homes where occupants had complained of health concerns presumably due to carpet. The laboratories used an ASTM mouse bioassay designed to test for irritation, measured as changes in the respiratory rate of the mice; mortality of the mice would, on the other hand, be an indicator of toxicity, for which the bioassay is not designed. Therefore, the newsletter notes, "we question the appropriateness of Anderson's press releases before the results are replicated and the work is published in a scientific journal or otherwise subjected to scientific peer review procedures." It also notes that EPA is reportedly establishing a testing program to further investigate this question.

In the same issue, the newsletter discusses a detailed carpet VOC emissions study released by the Consumer Product Safety Commission (CPSC) and Lawrence Berkeley Laboratory (LBL). The study was designed to measure the emission rates of several individual VOCs. The study used four different carpet samples, and reportedly found that variations in the compounds emitted from similar carpets occurred. According to the newsletter, "[t]his should be a clear warning against generalizing about the composition and emissions from different carpets that may be generally similar."

SMOKING POLICIES AND RELATED ISSUES

[24] "Public Objections to Environmental Tobacco Smoke," J. Elder, B. Rosbrook, W. Choi, M. Johnson, D. Bal, and J.P. Pierce, *Preventive Medicine* 21: 701-709, 1992 [See Appendix A]

The authors of this study use data collected in the 1990 California Tobacco Survey to investigate the frequency of persons asking others not to smoke in certain situations. The authors report that the majority

of nonsmokers had asked or would ask another person not to smoke, and that those who were younger, more educated and had anti-tobacco attitudes were more likely to "object publicly to tobacco smoke."

- [25] "Smoking Policies of Licensed Child Day Care Centers in the United States," D.E. Nelson, J.J. Sacks, and D.G. Addiss, abstract presented at American Public Health Association Annual Meeting, November 1992 [See Appendix A]

This abstract reports on a survey of more than 2,000 child day care center directors done in 1990. Reportedly, 71.8 percent of centers had written smoking policies, and more stringent policies were associated with location in the western United States, location in a state with a regulations requiring centers to be smoke-free, and having less than 40 children attending full-time. According to the authors, 18 percent of centers "had policies that may not adequately protect children from exposure to both ETS and adult smoking behavior."

- [26] "The Role of Outcome and Efficacy Expectations in an Intervention Designed to Reduce Infants' Exposure to Environmental Tobacco Smoke Exposure," V.J. Strecher, K.E. Bauman, B. Boat, M.G. Fowler, R. Greenberg, and H. Stedman, abstract presented at American Public Health Association Annual Meeting, November 1992 [See Appendix A]

This abstract reports on an intervention trial "designed to reduce ETS exposure," aimed at mothers of infants. Reportedly, mothers who reported having low expectations concerning the outcome and efficacy of the intervention tended to have infants with higher levels of ETS exposure. However, the authors also report that outcome and efficacy expectations could be changed, and should be targeted in future intervention programs.

- [27] "Implications of a Worksite Smoking Ban," G. Sorensen, B. Beder, R. Prible, and J. Pinney, abstract presented at American Public Health Association Annual Meeting, November 1992 [See Appendix A]

The authors of this study discuss the implementation of a smoking ban at the New England Telephone Company. They report high levels of employee satisfac-

tion with the policy, and also discuss the rates of quitting smoking among employees. The authors attribute the numbers of quitters to high participation in a quit-smoking program consisting of hypnotherapy.

STATISTICS AND RISK ASSESSMENT

- [28] "Misuse of the Scientific Literature by the Tobacco Industry," L. Bero and S. Glantz, abstract presented at American Public Health Association Annual Meeting, November 1992 [See Appendix A]

The authors of this abstract discuss the public comments submitted on the 1990 EPA draft Risk Assessment on ETS. While they note that 72 percent of the comments criticized the draft risk assessment, they also state that 84 percent of those critical comments were prepared by "consultants with financial ties to the tobacco industry or the industry itself." They also claim that the references cited in the critical comments differed from those cited by the EPA, namely, that 31 percent of the EPA citations concerned purported ETS health effects, compared to 15 percent of the citations in the critical comments. The authors also suggest that the critical comments used more unrefereed material. In conclusion, the authors suggest that the tobacco industry used consultants to "create controversy" concerning the draft risk assessment.

OTHER DEVELOPMENTS

- [29] Illinois Town Proclaims "Stop Smoking and Save the Children Day"

The town of Mt. Carmel reportedly proclaimed New Year's Day as "Stop Smoking and Save the Children Day." Touted as a way to improve the health and welfare of children who are exposed to ETS by their parents' smoking, the proclamation was part of "The Save Our Children Program," which is evidently being sponsored by Lederle Laboratories. Approximately 100 sets of parents who pledge to quit smoking will reportedly be able to enroll in the program, which will provide them with a support hotline and Lederle's ProStep nicotine transdermal system therapy free of charge. *See Business Wire*, December 29, 1992.

[30] Chicago Restaurateur Finds Smoking Ban Does Not Pay

Citing significant business losses, the owner of a Chicago restaurant has reportedly decided to reverse an 18-month old smoking, perfume and cologne ban at his establishment. Claiming to be allergic to all three substances, restaurateur Jimmy Rohr apparently lost a great deal of private-party business to the ban. Beginning on January 18, smoking will be permitted in one of two dining rooms five days a week. Rohr has evidently promised his nonsmoking patrons that they will not be bothered by the smoke as he has "a great exhaust system." See *Chicago Tribune*, December 18, 1992.

MEDIA COVERAGE

[31] "Scientists Seek Research Solutions Necessary to Define Multiple Chemical Sensitivity," *Air Toxics Report*, November 20, 1992

According to this article, "Scientists are encountering numerous research problems in seeking the causes and health effects of multiple chemical sensitivity (MCS)." The article quotes a researcher from the University of Texas who claims MCS victims suffer a wide range of symptoms including gastrointestinal illness and shortness of breath. She also says that about one-third of alleged sufferers meet the standard for chronic fatigue syndrome.

According to John Girman, EPA Indoor Air Division, who was also interviewed for the article, indoor air quality has been the focus of much of the research in the MCS area. He says that since indoor chemical pollutant levels are two to five times higher than outdoor pollutants, there are serious short- and long-term health effects from such exposure.

Girman also says that EPA has no regulatory authority over indoor air and is thus "limited" to conducting research and disseminating information. EPA has proposed a two-year study of persons who allegedly suffer from MCS, according to the article.

Congress recently appropriated \$250,000 for MCS research in the 1993 budget for the Agency for Toxic Substances and Disease Registry. That effort will reportedly be coordinated by the National Center for Environmental Health Strategies based in Vorhees, New Jersey. See *Indoor Pollution News*, November 13, 1992.

[32] "Women in Health: How to Stay Well in a Sick Building," L.J. Murray, *Working Woman*, January 1993

This article states that indoor air "pollution" in 20 to 30 percent of nonindustrial buildings results in allergy and flu-like symptoms in 20-50 million people. The article also states that "if each employee suffering from poor IAQ loses six minutes of concentration ability a day — the equivalent of three sick days a year — the indirect cost to employers is \$10 billion annually."

The remainder of the article consists of an interview with Alice Farrar, Vice President of Quality Management and Marketing at the Atlanta office of Clayton Environmental Consultants. In the interview, Farrar is reported to state that a poorly-designed ventilation system is a "major culprit" of sick building syndrome. However, in response to a question about major indoor air pollutants, Farrar reportedly said, "Tobacco smoke is a big one."

[33] "Smoking Bans are Spreading Far and Wide," *St. Petersburg Times*, December 20, 1992

This article profiles the measures that have been taken in the travel, entertainment and hotel accommodation businesses to balance health and marketing issues arising from the debate on ETS. The article concludes that health concerns currently appear to predominate marketing concerns as smoking bans have become more common.

A distinction is made between facilities that merely place restrictions on smoking and those that are smoke free. Evidently, totally smoke-free environments in the travel marketplace are rare. This is a situation of concern to those like Ahron Leichtman, founder of a Cincinnati-based firm that books smoke-free travel arrangements for large groups and plaintiff in a lawsuit claiming assault by "second-hand smoke."

"Sitting in a no-smoking section in a restaurant is like swimming in the non-chlorine section of a swimming pool," Leichtman is quoted as saying. "The only difference is that the chlorine in the pool will not kill you. Smoke might."

According to the article, some hotels impose a fine of \$250, used as a cleaning fee, if a guest smokes in a nonsmoking room. Robert Axelrad, EPA Indoor Air Division director, was interviewed for the article, and is quoted as saying that there is "much more exposure to

smoke" through absorption by carpets and furniture than "merely through recirculation."

One Florida hotel reportedly sued a guest in small claims court for refusing to pay the fee after he smoked in his room, and the dispute was resolved on the TV show, *The People's Court*. Television jurist Judge Wapner ruled that the guest had signed a statement promising not to smoke in his room and that this was a legal contract. The guest was ordered to pay the \$250 fine.

► *Leichtman v. WLW Jacor Communications* dismissed, item 13.

IN EUROPE & AROUND THE WORLD

REGULATORY AND LEGISLATIVE MATTERS

CANADA

[34] New Year Brings Tough Smoking Restrictions to Toronto

On New Year's Day, tough new smoking restrictions reportedly went into effect in the City of Toronto. They apply to virtually all public places including sports and entertainment centres and malls. They also apparently apply to all workplaces. Smoking rooms with independent ventilation can be installed for smokers, but such rooms cannot take more than 25 percent of total floor space and cannot occupy areas that have other functions. Fines of up to \$5,000 can be imposed for violations.

Smoking was reportedly already banned in Toronto child-care centres, laundromats, public lobbies and reception areas, hospitals and other health care facilities, city-owned and provincial government workplaces, and buildings under federal jurisdiction, including banks. Bars and restaurants in Toronto have also been subject to previously-imposed smoking regulations; 50 percent of floorspace must be set aside as nonsmoking, but separate ventilation is not required. See *The Toronto Star*, December 28, 1992.

[35] Calgary Council Approves Bylaw on Smoking

On December 14, 1992, the Calgary Council reportedly approved a bylaw that prohibits smoking in public places such as waiting and reception areas, elevators,

lobbies and public washrooms. In addition, the new law requires workplaces to adopt smoking policies. In the absence of a policy, smoking prohibitions will be instituted. The head of each company will have the final say when workplaces cannot decide upon a smoking policy. According to press reports, several amendments were made to the bylaw which made it more "fair" for smokers. The bylaw will go into effect this summer. See *Calgary Herald*, December 15, 1992.

GERMANY

[36] Health Minister Rejects French Public Smoking Ban

German Health Minister Horst Seehofer reportedly said during an interview that the ban on smoking in public which has been implemented in France would not work in Germany. According to Seehofer, changing awareness is the only way to influence behavior. See *Hamburger Morgenpost*, November 12, 1992. For further information about the French law on smoking that went into effect on November 1, 1992, see issue 33 of this Report, October 23, 1992.

ZAMBIA

[37] Government Imposes Smoking Ban

According to published press reports, the Zambian government has banned smoking in public places. The ban reportedly applies to hospitals, cinema halls, theatres, public transport, elevators, schools and kindergartens, and makes Zambia the 64th country in the world to enact legislation controlling smoking in public places. See *Xinhua General News Service*, December 20, 1992.

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

AUSTRALIA

[38] *Department of Occupational Health and Safety v. Burswood Resort (Management) Ltd.* (Magistrate's Court, Perth) (filed December 1992)

The Western Australia Department of Occupational

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Health and Safety has filed a complaint against the owners of a casino for allegedly failing to protect its employees from exposure to ETS. The complaint was reportedly filed under Regulation 330(1)(c) of the Occupational Health, Safety and Welfare Act, violation of which carries a maximum fine of \$50,000, and has been listed for a hearing in the Perth Magistrate's Court on February 24, 1993.

The casino, owned by Burswood Resort (Management) Ltd., employs 2,600 full-time and "casual" staff and is apparently Western Australia's largest tourism employer. According to published press reports, the complaint alleges that on or about June 28 and July 12, 1992, Burswood Resort Casino failed to ensure that effective measures were taken to control the level of ETS, so that the health and safety of its employees was not at risk. Evidently, the department monitored smoke levels in the casino during those months after receiving complaints by some 150 casino employees. See *Adelaide Advertiser*, *Border Mail*, *The Examiner* and *West Australian*, December 30, 1992, and *The Australian*, December 31, 1992.

LEGAL ISSUES AND DEVELOPMENTS

GERMANY

[39] German Lawyer Addresses Legal Grounds for Workplace Smoking Bans

Reportedly, Dr. Klaus Zapka, a lawyer from Göttingen, Germany, has claimed in a German journal that insufficient epidemiologic, toxicologic and legal support exists for workplace smoking bans. Much of the article reportedly consists of a discussion of scientific literature in connection with legal questions related to court decisions on ETS at the workplace. See *Betriebs-Berater* 1992 Heft 26.

SCIENTIFIC/TECHNICAL ITEMS

LUNG CANCER

[40] "Lung Cancer from ETS Exposure at the Workplace: A More Theoretical Issue," F. Adlkofer, *Zbl. Arbeitsmed.* 42(10): 400-424, 1992

This German article reportedly contains the claim that "a lung cancer risk due to ETS can neither be

entirely ruled out nor proved, let alone quantified." The author also reportedly suggests that smoking bans would not "benefit" the working population, as other constituents of the workplace environment would not be included. The author's conclusions are reportedly based on a review of literature concerning ETS.

OTHER HEALTH ISSUES

[41] "Four Modifiable and Other Major Risk Factors for Cot Death: The New Zealand Study," E.A. Mitchell, B.J. Taylor, R.P.K. Ford, A.W. Stewart, D.M.O. Becroft, J.M.D. Thompson, R. Scragg, I.B. Hassall, D.M.J. Barry, E.M. Allen, and A.P. Roberts, *J. Paediatr. Child Health* 28 (Suppl. 1): S3-S8, 1992 [See Appendix A]

The authors of this case-control study report more than fifteen potential risk factors for sudden infant death syndrome (SIDS). Among these is maternal smoking. Reported unadjusted risk estimates for maternal smoking are all greater than 3.4; when other variables are controlled for, the relative risk associated with maternal smoking is reportedly 1.79, which is claimed to be statistically significant.

SMOKING POLICIES AND RELATED ISSUES

[42] *Creating Effective Smoking Policies in the NHS*, Department of Health, Health Education Authority, United Kingdom, 1992

This booklet was prepared by the National Health Service (NHS) in the United Kingdom as part of the healthy-workplace program. The NHS has set the date of May 31, 1993, for its premises to become smoke free "to protect the health of non-smokers, and to encourage other employers and the general public to take steps to avoid the risks of exposure to tobacco smoke."

The booklet cites purported health effects of ETS exposure, current government policy, and prevailing public opinion in support of its proposed smoking policy. Included in the booklet are a model policy and instructions for implementing it, as well as a questionnaire for assessing staff opinions about smoking at work.

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OTHER DEVELOPMENTS

BELGIUM

[43] Workplace Tobacco Policies and Programs Discussed at European Workshop

On November 18, 1992, the European Workshop on Tobacco Prevention at the Workplace was conducted in Brussels under the auspices of the Europe against Cancer programme. Presentations were made at the workshop by representatives of various health and anti-smoking groups who addressed efforts being made in their respective countries to reduce or ban smoking in the workplace. Most presenters acknowledged that workplace smoking policies do not work unless they are reached by consensus and indicated that their organizations are focusing their resources on educational programs intended to convince smokers to quit smoking. Participants included representatives of the EC Commission, the World Health Organization, ASH, occupational health and medical organizations and the tobacco industry.

CHINA

[44] Hong Kong Smoking Group Produces ETS Booklet

The Tobacco Institute of Hong Kong (TIHK) has reportedly produced an 18-page booklet, written in English and Cantonese, which addresses claims about ETS and promotes tolerance as a way to resolve disputes between smokers and nonsmokers. The TIHK will apparently distribute the booklet throughout the community to sports and arts entities, the media, banks, governmental institutions and other similar groups. See *TDC Newstround*, December 24, 1992.

UNITED KINGDOM

[45] Claims of ETS Caused Deaths Made at Press Conference

On January 5, 1993, Phillip Whidden of the Association of Non-Smokers Rights held a press conference during which the claim was made that nearly 140,000 Europeans die every year from exposure to ETS. The conference coincided with the publication of a report authored by Whidden, which further claims that

about 10,000 adults and some 5,000 children and fetuses in Britain die each year from ETS exposure. See *Evening Standard*, January 5, 1993.

During a news broadcast Whidden was quoted as saying, "Twenty times as many people are being killed by second-hand smoking as by drunk driving; we have no law and no protection. The courts aren't on our side, we need immediate action." Whidden is apparently calling upon the government to pass laws to force people not to smoke in the presence of nonsmokers and to control smoking so that children are not exposed to ETS. See Transcript, *Midday News, LBC Newstalk*, January 5, 1993.

MEDIA COVERAGE

WORLDWIDE SMOKING RESTRICTIONS

[46] "Non-smokers Get a Break as the World Turns on Smoking," N. Maes, *Chicago Tribune*, January 3, 1993

This article, intended to inform American nonsmoking travelers about smoking restrictions around the world, provides a summary of smoking policies and regulations that are in effect in a number of foreign cities, nations and regions. The author also provides telephone numbers for organizations in New Zealand and the United Kingdom that provide more detailed information about locations of interest to travelers where smoking is restricted or prohibited.

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APPENDIX A

The numbers assigned to the following article summaries correspond with the numbers assigned to the synopses of the articles in the text of this Report.

IN THE UNITED STATES

ETS EXPOSURE AND MONITORING

- [20] "Assessment of Multiple Markers of Environmental Tobacco Smoke (ETS) in Controlled, Steady-State Atmospheres in a Dynamic Test Chamber," R.J. Rando, P.K. Menon, H.G. Poovey, and S.B. Lehrer, *American Industrial Hygiene Association Journal* 53(11): 699-704, 1992

"Assessment of ETS levels in indoor air is problematic in that cigarette smoke is an exceedingly complex mixture of particulate and gaseous phase components, whose character changes with time because of physical/chemical removal mechanisms, decomposition, and reaction. Most commonly, suspended particles, carbon monoxide, and nicotine are utilized as markers of ETS. Measurement of the ultraviolet light-absorbing fraction of suspended particles has been shown to greatly diminish bias from background levels of airborne particulate matter. However, nicotine is considered the most specific of these markers because it is uniquely associated with the tobacco plant. Greater than 90% of the nicotine is found in the gas phase of ETS, making it a relatively poor marker of the particulate phase or of whole smoke.... Recently, the use of solanesol has been investigated as a alternative specific marker for ETS. Solanesol is also unique to members of the tobacco plant family and exists in air as condensed particulate matter, thus complementing nicotine analyses for assessment of both particulate and gaseous phase components of ETS. However, the determination of solanesol is difficult and requires extensive sample workup."

"Controlled test atmospheres of sidestream and mixed mainstream/sidestream tobacco smoke were produced in a dynamic test chamber.... Different target levels of smoke were attained by varying the number of cigarettes being smoked (one or two cigarettes continuously) and dilution airflow through the chamber. For each level, a 'smoke index' was calculated as the number of cigarettes being smoked divided by the dilution flow rate. Ultraviolet light-absorbing particulate matter (UVP); aerosol counts and size distribu-

tion; and concentrations of CO, NO₂, NH₃, formaldehyde, acetaldehyde, acrolein, and nicotine were determined in the test atmospheres and background dilution air. Parameters exhibiting the highest correlations with smoke index included UVP, aerosol counts, formaldehyde, and acetaldehyde. The other parameters were also highly correlated.... Differences in concentrations for sidestream and mixed mainstream/sidestream atmospheres were statistically significant for acetaldehyde, formaldehyde, and CO; in each case the level was higher in mixed mainstream/sidestream smoke."

"Commonly used markers and conversion factors for ETS are not necessarily absolute but depend on the generation history and age of the smoke. In light of this, the use of multiple markers of ETS, and a careful analysis of their correlations, is suggested in evaluating ambient levels of ETS. This approach is also advantageous in attempting to dichotomize the contribution of sidestream and mainstream smoke to ETS levels, and in addition, the changing nature of ETS as a function of time after generation offers the potential for using multiple markers to estimate smoke age."

"The pollutant generation factors reported would be most applicable to locations with relatively high ventilation rates such as break rooms, smoking lounges, or social pubs. Under these conditions, the concentration of pollutant produced as a function of smoke index offers a guideline for required ventilation rates to minimize exposure of nonsmokers to passive cigarette smoke."

INDOOR AIR QUALITY

- [21] "Modeling the Modification of the Risk of Radon-Induced Lung Cancer by Environmental Tobacco Smoke," D.J. Crawford-Brown, *Risk Analysis* 12(4): 483-493, 1992

"The presence of environmental tobacco smoke (ETS) in homes has been implicated in the causation of lung cancer. While of interest in its own right, ETS also influences the risk imposed by radon and its decay products. The interaction between radon progeny and ETS alters the exposure, intake, uptake, biokinetics, dosimetry, and radiobiology of those progeny. The present paper details model predictions of the various influences of ETS on these factors in the U.S. popula-

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tion and provides estimates of the resulting change in the risk from average levels of radon progeny. It is predicted that the presence of ETS produces a very small (perhaps unmeasurable) increase in the risk of radiation-induced tracheobronchial cancer in homes with initially very high particle concentrations for both active and never-smokers, but significantly lowers the risk in homes with initially lower particle concentrations for both groups when generation 4 of the lung is considered the target site. For generation 16, the presence of ETS generally increases the radon-induced risk of lung cancer, although the increase should be unmeasurable at high initial particle concentrations. The net effect of ETS on human health is suggested to be a complicated function of the initial housing conditions, the concentration of particles introduced by smoking, the target generation considered, and the smoking status of exposed populations. This situation precludes any simple statements concerning the role of ETS in governing the incidence of lung cancer in a population."

SMOKING POLICIES AND RELATED ISSUES

- [24] "Public Objections to Environmental Tobacco Smoke," J. Elder, B. Rosbrook, W. Choi, M. Johnson, D. Bal, and J.P. Pierce, *Preventive Medicine* 21: 701-709, 1992

"The adverse health effects of passive or environmental tobacco smoke have been well documented. Passive smoking affects everyone from an adult non-smoker to an unborn fetus. Recently, Glantz and Parmley have asserted that passive smoking is the third leading cause of premature death and disability in the United States. Despite this recent evidence, there are very limited data on the extent to which cigarette smokers are being asked not to smoke in situations in which they are exposing others to their smoke."

"Creative public health strategies are needed to help passive smokers protect their own health and to mobilize these individuals to become more vocal and assertive in their opposition to other people's cigarette smoke and to tobacco use in general. Unfortunately, little is known about the demographic characteristics, health beliefs, social attitudes, and rationales behind

anti-tobacco activism of those individuals who are willing to ask smokers not to smoke in public. The present study sought to provide clarification of some of these issues through a population-based telephone survey of residents of California."

"The present study suggests that the health beliefs and social influences included in the 1990 California Tobacco Survey are related to the individual's level of assertiveness against environmental tobacco smoke. The majority of the non-smokers and nearly half of the smokers in this randomly sampled population indicated that they had recently asked someone to refrain from smoking, while more than one-fourth indicated that, while they had not recently done so, they would ask someone not to smoke. Only 12.7% of the non-smokers and 26.4% of the smokers were not willing to do so. This willingness varied substantially by age, with older individuals (especially older smokers) being less willing to speak up than younger ones."

"The strongest predictors of having asked someone not to smoke in certain situations or being willing to do so were related to social influence in both smokers and nonsmokers. For those individuals who were never willing to ask someone not to smoke, the strongest predictors for both smokers and nonsmokers were related to health beliefs (e.g., smoking by pregnant women will harm the health of her baby, and preferring to smoke even if it means not living as long)."

"Results from this study are important from two perspectives. Individuals promoting activism among nonsmokers (or among smokers who abstain from smoking in public) may note that, to reach a critical mass, additional efforts with older and with less educated smokers need to be made. Conversely, core support for a campaign of anti-tobacco activism could be drawn from younger nonsmokers or those smokers who refrain from smoking in certain situations. Smokers could be approached with social themes emphasizing the isolation that results from smoking in public places. Additional health and social messages (e.g., the importance of helping smokers who are trying to quit, the harm that smoking can do to the unborn fetus, and the addictiveness of smoking) may increase the effectiveness of any campaign in promoting assertiveness against environmental tobacco smoke."

"The most interesting outcome of the study was the finding that a high percentage of individuals, especially

among current smokers, have either recently asked someone not to smoke or would have been willing to do so. Given the reluctance to and difficulty of enforcing public nonsmoking statutes, such consumer activism has a tremendous potential for keeping shared breathing spaces free from cigarette smoke."

"Results from this study can provide assertive non-smokers with the assurance that they are not in the minority, but rather among the majority when asking smokers to refrain from smoking in public."

- [25] "Smoking Policies of Licensed Child Day Care Centers in the United States," D.E. Nelson, J.J. Sacks, and D.G. Addiss, abstract presented at American Public Health Association Annual Meeting, November 1992

"Environmental tobacco smoke (ETS) adversely affects children's health, but the type and extent of day care center employee smoking policies are unknown. We analyzed a subset of data from a telephone survey of a nationally representative sample of 2,007 licensed child day care center directors done in 1990 by the CDC. Most centers (71.8%) had written smoking policies and would hire smokers (92.7%). A total of 54.6% of centers had smoke-free policies indoors and outdoors. 26.6% had smoke-free policies indoors only, 18.4% restricted smoking to certain times or places, and 0.4% had no restrictions. More than 99% of centers had employee smoking policies at least as stringent as required by state or local regulations. Predictors of having more stringent policies included location in the West, location in a state with a regulation requiring centers to be smoke-free, and having <40 full-time children. More than 18% of centers (with an estimated 700,000 children <5 years of age) had policies that may not adequately protect children from exposure to both ETS and adult smoking behavior. Parents, health care providers and other child advocates should insist that day care centers adopt smoke-free policies, and state and local governments should enact and enforce smoke-free day care regulations."

- [26] "The Role of Outcome and Efficacy Expectations in an Intervention Designed to Reduce Infants' Exposure to Environmental Tobacco Smoke Exposure," V.J. Strecher, K.E. Bauman, B. Boat, M.G. Fowler, R. Greenberg, and H. Stedman, abstract presented at American Public Health Association Annual Meeting, November 1992

"Increasing recognition and understanding of the

adverse effects of passive smoking in childhood, particularly during the first year of life, has lead to efforts to reduce exposure to environmental tobacco smoke (ETS). We have recently completed an intervention trial designed to reduce ETS exposure through a nurse home visit program aimed primarily at mothers of infants. The content, timing and methods of the intervention were largely informed by the self-efficacy framework developed by Bandura. The study population consisted of the 585 enrolled families (292 intervention and 293 control) who received the baseline and both follow-up data collection interviews. Data collectors visited the homes of enrolled infants when the infants were approximately 18 days old and before the family knew their group assignment. The follow-up data were collected when the infants were approximately seven and twelve months old. Longitudinal analyses found both outcome and efficacy expectations predictive of change in, and maintenance of, ETS exposure control. In particular, mothers reporting *both* low outcome and low efficacy expectations tended to have infants with the highest levels of ETS exposure. We also found that our intervention was effective in changing outcome and efficacy expectations in the desired direction. These findings suggest that outcome and efficacy expectations are changeable, and therefore, represent important targets in future programs aimed at controlling ETS exposure."

- [27] "Implications of a Worksite Smoking Ban," G. Sorensen, B. Beder, R. Prible, and J. Pinney, abstract presented at American Public Health Association Annual Meeting, November 1992

"This paper reports the results of a study conducted in the New England Telephone Company one year after implementation of a ban on smoking in all of its approximately 600 sites. In implementing the policy, the company offered all employees and their spouses the opportunity to participate in a 90-minute hypnotherapy quit smoking seminar, paid for by the company on company time. Two surveys were conducted: a survey of a stratified random sample of 1,949 employees (response rate = 67%), and a survey of the 3,481 participants in the quit smoking program still employed by the company (response rate = 76%). 67% of the respondents to the employee survey were satisfied or very satisfied with the policy, and 89% said that people always or almost always follow the smoking policy. Only 10.7% said that the smoking policy made it harder for them to do their job; 29.8% said it made

it easier. Of employees who were smokers at the time the policy was first announced, 14% reported quitting by the time of the survey. Of particular importance was the high participation rate of smokers in the quit smoking program; 71% of all smokers employed by the company participated in this program. 58% of respondents to the quit smoking program participant survey reported that they quit for at least 48 hours, and 15% reported they had not smoked even a puff since their quit date. The high participation rate of smokers in this quit smoking program translates into a high number of smokers company-wide who quit smoking as a result of this program."

STATISTICS AND RISK ASSESSMENT

- [28] "Misuse of the Scientific Literature by the Tobacco Industry," L. Bero and S. Glantz, abstract presented at American Public Health Association Annual Meeting, November 1992

"In May 1990, the USEPA released for public comment a draft risk assessment identifying environmental tobacco smoke (ETS) as a cause of lung cancer in adults and respiratory problems in children. We analyzed the comments and literature cited to determine if the tobacco industry attempted to create scientific controversy where none existed. Seventy-two percent (118/165) of the comments criticized the draft as an incomplete and selective analysis of the scientific literature which contained statistically flawed and inconclusive data. The high proportion of critical comments suggested that the draft had invalid conclusions, but examination of the comments revealed [reportedly statistically significant] differences in the nature and sources of critical comments compared to comments that supported the draft. Eighty-four percent of the critical comments were prepared by consultants with financial ties to the tobacco industry or the industry itself. Comments supporting the draft were submitted primarily by university faculty (34% of supporting comments) or government health agencies (30%). To test the hypothesis that the literature search performed by the EPA was inadequate as claimed in the critical comments, we compared the citations in the EPA draft to those in the critical comments. There was a [reportedly statistically significant] difference in the citation patterns. Thirty-one percent (123/391) of

the EPA citations were on ETS health effects compared to 15% (235/1620) of the citations in the critical comments. Thirty-nine percent of the citations in the critical comments were of unrefereed material compared to 28% of the citations in the EPA draft [reportedly a statistically significant difference]. Our findings suggest that the tobacco industry used the public comment period to create controversy by hiring consultants to criticize the draft, primarily on the basis of unrefereed sources not relevant to the health effects of ETS."

IN EUROPE AND AROUND THE WORLD

OTHER HEALTH ISSUES

- [41] "Four Modifiable and Other Major Risk Factors for Cot Death: The New Zealand Study," E.A. Mitchell, B.J. Taylor, R.P.K. Ford, A.W. Stewart, D.M.O. Becroft, J.M.D. Thompson, R. Scragg, I.B. Hassall, D.M.J. Barry, E.M. Allen, and A.P. Roberts, *J. Paediatr. Child Health* 28(Suppl. 1): S3-S8, 1992

"New Zealand's high mortality rate from sudden infant death syndrome (SIDS) prompted the development of the New Zealand Cot Death Study. A report of the analysis of the data from the first year has been published. This report now gives the major identified risk factors from the full 3 year data set. In this case-control study there were 485 infants who died from SIDS in the post-neonatal age group, and 1800 control infants, who were a representative sample of all hospital births in the study region. Obstetric records were examined and parental interviews were completed in 97.5% and 86.9% of subjects, respectively. As expected many risk factors for SIDS were confirmed including: lower socio-economic status, unmarried mother, young mother, younger school-leaving age of mother, younger age of mother at first pregnancy, late attendance at antenatal clinic, non-attendance at antenatal classes, Maori, greater number of previous pregnancies, the further south the domicile, winter, low birthweight, short gestation, male infant and admission to a special care baby unit. In addition, however, we identified four risk factors that are potentially amendable to modification. These were the prone sleeping position of the

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baby (odds ratio (OR) = 3.70; 95% confidence interval (CI) = 2.91, 4.70); bed sharing (OR = 2.70; 95% CI = 2.02, 3.62); maternal smoking of 1-9 cigarettes per day (OR = 3.47; 95% CI = 2.50, 4.83), 10-19 cigarettes per day (OR = 3.94; 95% CI = 2.87, 5.41) or more than 20 cigarettes per day (OR = 5.90; 95% CI = 4.20, 8.31); and not breast feeding (OR = 2.39; 95% CI = 1.88, 3.04). After controlling for all of the above variables, the relative risks associated with prone sleeping position (OR = 4.84), sharing bed (OR = 2.02), maternal smoking (OR = 1.79) and not breast feeding (OR = 1.89) were still statistically significant. Population-attributable risk calculations suggest that these four risk factors may account for 82% of deaths from SIDS. The SIDS mortality rate may fall to less than 0.7/1000 live births if all parents stop putting their infants down to sleep in the prone position, do not sleep with their baby, do not smoke, and breast feed their infants."

"Recall bias is a potential problem in retrospective case-control studies, although two recent studies have shown that recall bias has not been a major problem in case-control studies of SIDS... This study has been able to compare prospectively collected information on maternal smoking in pregnancy, breast feeding at discharge from obstetric hospital (from obstetric records) and prone sleeping position at 2-6 weeks of age (from community nursing records), with retrospective data on maternal smoking in the final 2 weeks, breast feeding at any stage of life and infant's sleeping position at the time of death/nominated time (obtained by parent interview). The prevalence of these behaviours are similar whether collected prospectively or retrospectively, confirming that recall bias is not a problem in this particular study."

"This study has confirmed the risk factors that were identified in the analysis of the data from the first year of the study. The mothers of cases were significantly younger, less likely to be married, left school earlier and had lower socio-economic status than mothers of control infants. There were also younger when they had their first pregnancy, more likely to have had other pregnancies, less likely to have attended antenatal classes in the index pregnancy and booked for antenatal care later than control mothers. The infants were more likely to be male, Maori, of low birthweight, a shorter gestation period and were more likely to be admitted to

a neonatal unit. The expected winter excess of SIDS was also observed."

"The full results of the study confirm that the most important modifiable risk factor for SIDS is the prone sleeping position."

"The present study also strengthens the evidence for an association between maternal smoking and SIDS. Most studies have shown the adverse effect of maternal smoking, and this persists after controlling for potential confounders. Furthermore, we were able to demonstrate again a biological gradient, such that the more the mothers smoked the more risk there was to the infant. Further analyses on the effect of smoking, including paternal smoking, will be reported later."

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ETS/LAQ REPORT

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